

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOBIAS MOELLER-BERTRAM, Individually and
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

GEMINI TRUST COMPANY, LLC, and DIGITAL
CURRENCY GROUP, INC.,

Defendants.

No. 23-cv-2027

Hon. Lewis J. Liman

DECLARATION OF TRAVIS FREEMAN

Travis Freeman declares pursuant to 28 U.S.C. § 1746:

1. I am over 18 and competent to provide this declaration. I have been employed by Gemini Trust Company, LLC (“Gemini”) for 5 years and am currently Gemini’s Director of Compliance. In that role, I am familiar with, and I have access to, Gemini’s records kept in the ordinary course of business regarding the process for creating and activating accounts and accepting the terms of the Gemini User Agreement.

2. The following facts are based on my personal knowledge and review of Gemini’s records created and maintained in the ordinary course of Gemini’s business.

OVERVIEW

3. Gemini runs an online digital asset platform that allows customers to buy, sell, transfer, and store various cryptocurrencies through Gemini’s website. In order to use the Gemini platform, customers must first create a Gemini account and agree to the terms of the Gemini User Agreement.

4. Beginning February 1, 2021, one of the services offered by Gemini was a lending program—Gemini Earn—in which registered Gemini users could elect to participate. Through the Gemini Earn program, participants such as Plaintiffs were able to make the independent, purely

voluntary decision to lend digital assets to Genesis Global Capital, LLC (“Genesis”) in exchange for payment of interest.

AGREEMENTS GOVERNING THE GEMINI EARN PROGRAM

5. Participants in the Gemini Earn program were required to enter into the Gemini User Agreement (the “User Agreement”) which governs the relationship between Gemini and participants on the Gemini platform. It is impossible to become a Gemini registered user, including a participant of the Gemini Earn program, without first agreeing to the terms of the User Agreement.

6. I have reviewed Gemini’s electronic records and those records reflect that Plaintiff Tobias Moeller Bertram (“Plaintiff”) created his account at Gemini on July 8, 2020 at 2:28:31 AM EDT.

7. To open an account on that date, an individual had to use Gemini’s account registration page on Gemini’s website. On the registration webpage, an individual was prompted and required to enter his or her full name, email address, and a password. Before proceeding further in the account creation process, the individual was required to affirmatively check a separate box next to language stating “By creating this account, you agree to our User Agreement and Privacy Policy.” The underlined phrases “User Agreement” and “Privacy Policy” each hyperlinked to the full text of the respective document on Gemini’s website so the individual could review it. A screenshot of the relevant portion of this webpage is attached as **Exhibit 1**.

8. When Plaintiff registered with Gemini, it was impossible for an individual to create an account without checking the box expressly indicating agreement to the User Agreement. On that date, continuing the signup process required an individual to click a button with the text “Next.” If an individual did not check the box agreeing to the User Agreement, the “Next” button

remains grayed out and inoperable. Ex. 1.

9. Gemini maintains a log of certain actions taken by individuals in connection with their use of the Gemini platform. The log for Mr. Moeller-Bertram shows that he completed this registration process and thus accepted the User Agreement on July 8, 2020 at 2:28:31 AM EDT.

10. The User Agreement's terms are updated from time to time. The User Agreement has at all times included, and continues to include, a broad arbitration clause stating that "[the user] and Gemini agree and understand that any controversy, claim, or dispute arising out of or relating to this User Agreement or [the user's] relationship with Gemini—past, present, or future—shall be settled solely and exclusively by binding arbitration."

11. As relevant here, the User Agreement was updated on December 14, 2022 and that version of the User Agreement was operative on the date Plaintiff filed his lawsuit. The amended User Agreement is attached as **Exhibit 2**.

12. On December 15, 2022 at 6:26 p.m., Gemini sent an email to all registered users explaining that the User Agreement changed and encouraging Gemini users to review the amended User Agreement attached as **Exhibit 2**. The underlined phrase "**User Agreement**" hyperlinked to the full text of the amended User Agreement on Gemini's website so the individual could review it without logging into his/her account. The email is attached as **Exhibit 3**.

13. Further, if the user chose to log into his Gemini account after December 14, 2022, the "Sign In" page instructed as follows: "Our User Agreement has changed, including the Dispute Resolution provision. By clicking "Sign In" below, I agree to Gemini's **USER AGREEMENT** and **PRIVACY POLICY**." A screenshot of the relevant portion of this webpage is attached as **Exhibit 4**. The underlined phrase "**USER AGREEMENT**" hyperlinked to the full text of the amended User Agreement attached as **Exhibit 2**.

14. Gemini log shows that Plaintiff accepted the amended User Agreement by logging in on December 18, 2022 at 1:40:57 AM EDT.

15. I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 15, 2023

By Travis Freeman
Travis Freeman